

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/633,854

Applicant(s)

STAMPER ET AL.

Examiner

BRANDON JACKSON

Art Unit

3772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____.
13. ☒ Other: **NOTE: PLEASE ATTACH THE SUPPLEMENTAL ACTION IN THIS FOLDER TO THE ADVISORY TO SHOW THE CORRECTION OF A TYPOGRAPHICAL ERROR. THANK YOU.**

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772

/Brandon Jackson/
Examiner, Art Unit 3772

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues the Eigorn/Schroer does not disclose a device coupled to the two link system, as taught by claim 1. However, the complaint link, as taught by Schroer is the device that connects the links and causes the links to simultaneously adapt to changes in geometry of the head without manual intervention. Applicant argues there is no motivation to combine Eigorn and Schroer because Eigorn already discloses an adjustment mechanism, however, the Schoer adjustment mechanism is simpler and easier to use. Applicant argues the modification would render the Eigorn device unsatisfactory for its intended purpose., however, Applicant fails to give a reason why it would render is unsatisfactory. Applicant argues that pins (25) are not rigidly connected to the links, however, when nut (200) is tightened upon shaft (112) of the pin (25), the pin is then rigidly coupled to the link, because after the nut is tightened the pin (25) is no longer moved and the device is used for treatment. Applicant argues, with respect to claim 5, that Eigorn/Schroer does not disclose the claimed invention because Examiner has not defined the fourth link as the compliant link in the device. However, claim 5 was accidentally included in the statement of claims rejected. The Office Action does not address claim 5, because it was withdrawn by Applicant as being drawn to a non-elected invention. A supplemental action, including the correction is enclosed. Applicant argues the Eigorn/Schroer device does not teach a force applicator for simultaneously applying force to the links. However, the spring (25) of compliant link (20), taught by Schroer, is the force applicator that apply force to each link simultaneously. Spring (190) just happened to be another means of force application. Applicant claims the claim 26 contains means-plus-function format under 35 USC 112, paragraph 6. However, to properly invoke means-plus-function, Applicant's specification must explicitly state what the means for is. However, Applicant's specification fails to disclose what the means for simultaneously adapting the link system to changes in the geometry of the head without manual intervention. Therefore, it is assumed that the means for is the same as the device and compliant link in the other claims that allows the device to simultaneously adapt to changes in the geometry of the head.